

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

UM Corporation,

Plaintiff,

v.

Tsuburaya Productions Co., Ltd.,

Defendant.

Case No. CV 15-03764-AB (AJWx)

**ORDER GRANTING TSUBURAYA
PRODUCTIONS CO. LTD.'S
MOTION FOR SUMMARY
JUDGMENT**

Before the Court is Defendant and Counter Claimant Tsuburaya Productions Co., Ltd.'s ("TPC") Motion for Summary Judgment, filed June 5, 2017 (Dkt. No. 136 ("Mot.")). Plaintiff and Counterdefendant UM Corporation ("UMC") filed an Opposition on June 23, 2017 (Dkt. No. 150 ("Opp'n")), and TPC filed its Reply on July 10, 2017. (Dkt. No. 164 ("Reply")). The Court heard oral argument on July 24, 2017, and took the matter under submission. (Dkt. No. 179.) For the following reasons, the Court **GRANTS** TPC's motion for summary judgment.

I. BACKGROUND

a. Ultraman Origins and the 1976 Document

In the early 1960s, TPC created the superhero "Ultraman." (Dkt. No. 165,

1 TPC's Statement of Uncontroverted Facts ("SUF") 2.) Ultraman became an icon in
2 Japan, and through a variety of audiovisual works the superhero's popularity spread
3 throughout the world. (SUF 4.) By 1973, the Ultraman library grew to include the
4 works "Ultra Q," "Ultraman," "Ultra Seven," "The Return of Ultraman," "Ultraman
5 Ace" and "Ultraman Taro." (SUF 3.) TPC continued creating works based on the
6 Ultraman character that have been released and marketed around the world. (SUF 4.)

7 In a document dated March 4, 1976, Mr. Noboru Tsuburaya, TPC's President at
8 the time, purportedly licensed copyright and reproduction rights in certain Ultraman
9 works to Mr. Sompote Saengduenchai ("Sompote"), the President of Chaiyo Film Co.,
10 Ltd. ("the 1976 Document"). (Dkt. No. 165, UMC's Statement of Genuine Issues of
11 Material Fact ("SGI") 35, 38.) Under the 1976 Document, only Sompote had the
12 right to use certain Ultraman works outside of Japan. (SGI 35.) The document
13 granted a license with respect to the following works: "Giant vs. Jambo 'A',"
14 "Haruman and the Seven Ultraman," "Ultraman 1 'Ultra Q'," "Ultraman 2,"
15 "Ultraman Seven," "Return Ultraman," "Ultraman Ace," "Ultraman Taro," and
16 "Jamborg Ace," sometimes referred to as the "original" Ultraman works. (Dkt. No.
17 153, Declaration of Jeffrey D. Wexler ("Wexler Decl.") ¶ 2, Ex. A.) The 1976
18 Document defined the scope of the license granted:

19 All rights engendered by this License Granting Agreement shall
20 define and include

21 3.1 Distributing Right.

22 3.2 Production Right.

23 3.3 Reproduction Right.

24 3.4 Copyright.

25 3.5 Trademark.

26 3.6 Broadcasting through any mass media such as Radio,
27 Television, etc. and the right to advertise in any newspaper.

28 3.7 Reproduction of all models and characters used in the
production of the films mentioned in article 1 under the original
character by any material and in any form for commercial
purposes.

3.8 Transfer the rights mentioned above to the third person.

(*Id.*) In March 2007, Sompote transferred his rights under the 1976 Document to his son, Mr. Perasit Saengduenchai (“Perasit”). (SGI 54.) In December 2008, Perasit transferred these rights to UMC. (SGI 55.)

a. History of Litigation Regarding the 1976 Document

Disputes involving the 1976 Document have been litigated in Japan, China, and Thailand with conflicting outcomes.¹ (SUF 10-18.) Relevant to this motion are two lawsuits in Japan that litigated the nature and scope of the rights transferred in the 1976 Document. In the first, a case in which TPC sued Sompote regarding copyright ownership, the Tokyo District Court found the 1976 Document did not grant Sompote the copyright or exclusive exploitation rights as to future Ultraman works not listed in the document itself. (SUF 10.)² In the second, Sompote sued TPC alleging TPC breached the 1976 Document by entering license agreements for new and original Ultraman works outside of Japan. (SUF 11.) The Tokyo District Court again found the 1976 Document did not grant Sompote, or by transfer UMC (which had intervened in the lawsuit (SUF 17)), rights to derivative works or adaptations based on the Ultraman works listed in the 1976 Document. (SUF 12.) The Court also rejected Sompote’s arguments that TPC’s license agreements for new Ultraman works breached the 1976 Document. (SUF 13.) In 2011, the Intellectual Property High Court affirmed these rulings, and Supreme Court of Japan affirmed the Intellectual Property High Court’s judgment in full. (SUF 15, 16, 21.)

b. Current Lawsuit

UMC filed the present lawsuit against TPC alleging TPC interfered with and infringed UMC’s rights under the 1976 Document in the United States. UMC relies

¹ Not all of these foreign judgments found the 1976 Agreement to be valid, but for purposes of this motion, neither party disputes the validity of the 1976 Agreement.

² The Court grants the parties’ requests for judicial notice. (Dkt. Nos. 141, 155.)

1 on the same theory rejected by the courts in Japan—that the 1976 Document granted
2 UMC the right to derivative works and adaptations of the original Ultraman works.
3 (Dkt. No. 1, Compl. ¶¶ 21-32.)

4 As it relates to this suit, in 2011, UMC granted TIGA Entertainment (Hong
5 Kong) Co., Ltd. (“TIGA”) as its licensee certain rights to use the Ultraman works
6 covered by the 1976 Document outside of Japan. (SUF 29.) In return, TIGA agreed
7 to pay UMC 70% of all revenues received outside of Thailand. (SGI 56.) TIGA then
8 granted three licenses to Golden Media Group (“GMG”) for the release of Ultraman
9 works in the United States, and pursuant to another agreement, a company named
10 Veranda Entertainment, LLC (“Veranda”) that handled GMG’s YouTube business,
11 eventually held certain online distribution rights for “Ultraman,” “Ultra Seven,” and
12 “Ultra Q.” (SUF 27-29; SGI 58; Compl. ¶¶ 19-20.)

13 In 2014, Veranda uploaded certain Ultraman works to YouTube, from which
14 YouTube’s Content ID system identified videos that contained the same content as
15 videos uploaded by TPC. (Compl. ¶ 24.) In response to YouTube notifications of the
16 content overlap, Veranda contacted TPC, stating, “Please contact me . . . if you
17 believe this is error and provide background on the chain of title.” (SUF 30.) After
18 corresponding with TPC, Veranda agreed to release the Youtube claims. (SUF 31.)
19 UMC claims TPC caused UMC’s licensees to withhold payment and otherwise
20 disrupted UMC’s contractual relationships. (Compl. ¶¶ 49-50.) UMC also alleges
21 TPC’s claims to ownership of Ultraman works outside of Japan contravene the 1976
22 Document. (Compl. ¶ 28.) UMC thus alleges claims for copyright infringement,
23 breach of contract, intentional interference with contractual relations, and declaratory
24 relief. (Compl., Dkt. No. 1.) TPC moves for summary judgment on the interpretation
25 of the 1976 Document and UMC’s copyright infringement, breach of contract, and
26 intentional interference claims. (Mot. at 1.)

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1 **II. LEGAL STANDARD**

2 Summary judgment is proper where the pleadings, discovery, and affidavits
3 show that there is “no genuine dispute as to any material fact and the movant is
4 entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); see also *Celotex Corp.*
5 *v. Catrett*, 477 U.S. 317, 322 (1986). The Court must view the evidence and the
6 inferences therefrom in the light most favorable to the non-moving party, and the
7 moving party bears the initial burden to demonstrate the absence of a genuine issue of
8 fact for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 251-52, 256 (1986).
9 However, once the moving party has met its initial burden, the burden shifts to the
10 non-moving party to show a genuine issue for trial by establishing that the fact in
11 contention is material (i.e. affecting the outcome of the suit under the governing law)
12 and the dispute is genuine (i.e. the evidence is such that a reasonable jury could return
13 a verdict for the nonmoving party). *Id.*; *Owens v. Local No. 169, Assoc. of W. Pulp*
14 *and Paper Workers*, 971 F.2d 347, 355 (9th Cir. 1987).

15 When the non-moving party bears the burden of proof at trial, the moving party
16 may meet its initial burden to show the absence of a genuine issue of fact for trial
17 either by presenting evidence that negates an essential element of the non-moving
18 party’s claim or by pointing out there is an absence of evidence to support the non-
19 moving party’s case at trial. *Celotex*, 477 U.S. at 322-25. The non-moving party
20 must make an affirmative showing on all matters placed at issue by the motion where
21 it has the burden of proof at trial. *Id.*; see also *Anderson*, 477 U.S. at 250-52.

22 **III. DISCUSSION**

23 TPC moves for summary judgment on the interpretation of the 1976 Document,
24 arguing there is no dispute “that the alleged 1976 Document did not transfer to
25 Sompote any rights to create new or derivative Ultraman works based on the ‘original’
26 Ultraman works or the characters in them, or to prohibit TPC from doing so outside of
27 Japan.” (Mot. at 2-3.) TPC also moves for summary judgment on UMC’s claims for
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1 breach of contract, copyright infringement, and intentional interference.

2 **a. Contract Interpretation**

3 TPC argues, applying the doctrines of international comity and res judicata and
4 under Japanese contract law, the 1976 Document did not transfer rights in derivative
5 Ultraman works.

6 i. International comity

7 Comity “is the recognition which one nation allows within its territory to the
8 legislative, executive or judicial acts of another nation” *Mujica v. AirScan Inc.*,
9 771 F.3d 580, 597 (9th Cir. 2014) (internal quotation marks omitted). Applying the
10 doctrine, courts in the United States “ordinarily refuse to review acts of foreign
11 governments and defer to proceedings taking place in foreign countries, allowing
12 those acts and proceedings to have extraterritorial effect in the United States.” *Int’l*
13 *Nutrition Co. v. Horphag Research Ltd.*, 257 F.3d 1324, 1329 (Fed. Cir. 2001) (citing
14 *Pravin Banker Assocs., Ltd. v. Banco Popular Del Peru*, 109 F.3d 850, 854 (2d Cir.
15 1997). But comity is a “rule of practice, convenience, and expediency rather than of
16 law that courts have embraced to promote cooperation and reciprocity with foreign
17 lands.” *Mujica*, 771 F.3d at 598. And “[c]ourts will not extend comity to foreign
18 proceedings when doing so would be contrary to the policies or prejudicial interests of
19 the United States.” *Int’l Nutrition Co.*, 257 F.3d at 1329.

20 TPC argues the judgments of the Japanese courts are entitled to recognition,
21 invoking UMC’s arguments in favor of applying comity to the same judgments on the
22 issue of the 1976 Document’s validity in support of UMC’s motion for judgment on
23 the pleadings. (See Dkt. No. 76.) TPC previously opposed this argument, asserting,
24 among other reasons, the inconsistency of foreign judgments regarding the
25 document’s validity precluded application of the doctrine. (See Dkt. No. 83 at 13-16.)
26 Now TPC argues the Court *should* grant comity to the judgments from Japan because
27 on the issue relevant to this motion—the 1976 Document’s interpretation, as opposed
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1 to its validity—foreign court decisions have reached the same conclusion. (Mot. at
2 13-14.)

3 At the same time, however, TPC signals its intent to challenge the validity of
4 the 1976 Document at trial (*id.* at 12 n.1), despite that the Japan courts decided the
5 issue to the contrary. (SGI 66.) In essence, TPC asks this Court to recognize the
6 Japan judgments and grant comity to a single issue on summary judgment, but reject
7 the holding of the Japan courts on a separate issue to allow it to relitigate the validity
8 of the agreement at trial. TPC has not explained or provided any authority that this
9 selectivity is a proper exercise of the doctrine, and it is not apparent how exercising
10 the Court’s discretion to rewrite the Japanese judgments in this way would advance
11 the concerns for “good neighbourliness, common courtesy and mutual respect
12 between those who labour in adjoining judicial vineyards.” *Mujica*, 771 F.3d at 598
13 (citing *JP Morgan Chase Bank v. Altos Hornos de Mexico, S.A. de C.V.*, 412 F.3d
14 418, 423 (2d Cir. 2005)). As TPC emphasized in its opposition to UMC’s motion for
15 judgment on the pleadings, comity is a discretionary doctrine, and as before, the Court
16 is not convinced the conveniently selective arguments put forth by the parties warrant
17 an exercise of this discretion.

18 ii. Issue preclusion

19 TPC also argues this Court should grant preclusive effect to the judgments from
20 Japan as to the interpretation of the 1976 Document. (Mot. at 14-16.) To determine if
21 a party is precluded from relitigating an issue decided in a foreign judgment, courts
22 engage in a two-step analysis: first deciding whether to recognize the foreign
23 judgment, and second determining which jurisdiction’s preclusion law to apply. *See*
24 *Alfadda v. Fenn*, 966 F. Supp. 1317, 1325-26 (S.D.N.Y. 1997), *aff’d*, 159 F.3d 41 (2d
25 Cir. 1998).

26 1. *Recognition of the Japanese judgments*

27 “In cases involving federal questions, federal courts generally apply federal law
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1 to determine whether to recognize a foreign country judgment.” *Id.* at 1325 (citing
2 cases). “Neither the Full Faith and Credit Act nor the principles of federalism apply to
3 the recognition of foreign country judgments.” *Id.* at 1329. Courts instead consider
4 whether

5 there has been an opportunity for a full and fair trial abroad before a
6 court of competent jurisdiction, [a] trial upon regular proceedings,
7 after due citation or voluntary appearance of the defendant, and under
8 a system of jurisprudence likely to secure an impartial administration
9 of justice between the citizens of its own country and those of other
10 countries, and there is nothing to show either prejudice in the court, or
11 in the system of laws under which it is sitting, or fraud in procuring
the judgment, or any other special reason why the comity of this
nation should not allow it full effect

12 *Hilton v. Guyot*, 159 U.S. 113, 202-03 (1895).

13 Here, both parties submitted to the jurisdiction of Japanese courts by filing or
14 intervening in one of the two cases at issue. And at some point in this litigation, both
15 TPC and UMC have advocated for recognizing the Japanese judgments. (See Dkt.
16 Nos. 76, 136.) The Court finds these two factors satisfy the considerations for
17 recognition elaborated in *Hilton*.

18 UMC, however, opposes recognition at this juncture, citing a lack of
19 reciprocity, that “[a]s a general matter, Japanese courts do not recognize issue
20 preclusion.” (Opp’n at 11.) But this rule of reciprocity, that “foreign judgments are
21 entitled to the same respect in the United States as a United States judgment would
22 receive in the courts of a foreign nation,” *Gordon & Breach Science Publishers S.A. v.*
23 *American Institute of Physics*, 905 F. Supp. 169, 179 n.8 (S.D.N.Y. 1995), “has fallen
24 into disfavor,” and is only a factor to consider in deciding whether to recognize a
25 foreign judgment. *Wilson v. Marchington*, 127 F.3d 805, 812 (9th Cir. 1997). And
26 “no rule prevents a court in the United States from giving greater preclusive effect to a
27 judgment of a foreign state than would be given in the courts of that state.”
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1 Restatement (Third) of The Foreign Relations Law § 481 cmt. c (1987). Considering
2 the parties' agreement, at one point or another, that the Court should recognize the
3 Japanese judgments, the Court so recognizes the judgments for purposes of
4 determining whether to grant them preclusive effect as to the narrow issue of
5 interpreting the 1976 Agreement.³

6 2. *Applicable law*

7 Before deciding the preclusive effect to give to the Japanese judgments, if any,
8 the Court "must resolve the question of which law to apply." *Hurst v. Socialist*
9 *People's Libyan Arab Jamahiriya*, 474 F. Supp. 2d 19, 32 (D.D.C. 2007). In
10 resolving whether to apply domestic preclusion law or that of the foreign jurisdiction
11 that issued the judgment in question, "[t]he majority of U.S. courts . . . follow
12 domestic rules of preclusion, whether they apply those of the applicable federal or
13 state court." *Hurst v. Socialist People's Libyan Arab Jamahiriya*, 474 F. Supp. 2d 19,
14 32 (D.D.C. 2007) ("Ordinarily, a federal court applies federal law on claim and issue
15 preclusion in non-diversity cases."); *see also Alfadda*, 966 F. Supp. at 1329
16 ("Regardless of the mechanisms utilized by a foreign court to achieve its objectives, a
17 United States court should not be confined to using the foreign court's mechanisms or
18 else forgo achieving its own objectives. Thus, the Court concludes that a federal court
19 should normally apply either federal or state law, depending on the nature of the
20 claim, to determine the preclusive effect of a foreign country judgment.").

21 UMC argues the Japanese judgments should not be given preclusive effect since
22 whether to apply the doctrine under Japanese law is discretionary: "The Japanese
23 courts have great discretion whether to use the doctrine of good faith to bar a party
24 from relitigating previously litigated issues." (Opp'n at 11.) UMC continues,
25 "Japanese courts are less likely to apply the doctrine of good faith to prevent the
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27 ³ Though other foreign judgments have considered issues related to the 1976
28 Document, none are inconsistent with the Japanese judgments as to the interpretation
of the document such that recognition is not warranted.

1 presentation of new legal arguments or facts that were not presented in a prior
2 lawsuit.” (*Id.*) These “new” issues not previously presented, according to UMC,
3 include

4 (1) the effect on the scope of rights conveyed by the 1976 Agreement
5 by the incorrect translation of ‘Reproduction’ used by the prior courts;
6 (2) the copyright rights under foreign law held under the 1976
7 Agreement by the exclusive licensee of exploitation rights outside of
8 Japan, both with regard to exploitation of rights and assertion of
9 infringement claims; and (3) the interpretation of the Bandai Non-
Contravention Agreement in conjunction with the two documents
entered into concurrently therewith.

10 (*Id.* at 11-12.)

11 Regardless of how Japanese courts would treat these issues, the Court notes
12 they are peripheral to the Japanese courts’ interpretation of the 1976 Document, which
13 is the precise issue TPC seeks to prevent from being relitigated. Though it does
14 appear, as UMC argues, that none of these issues “were presented to the courts in
15 Japan,” that is likely because the framing of those issues reflect UMC’s desired
16 characterizations in this litigation. But those questions need not have been presented
17 in order for this Court to afford the Japanese judgment preclusive effect, since those
18 questions can be resolved, at least in part, only once the 1976 Document is interpreted.

19 In any event, despite pointing out the differences in Japanese preclusion law,
20 UMC has not advanced any reason to depart from the majority approach of applying
21 domestic preclusion law to foreign judgments. Accordingly, this Court applies federal
22 preclusion law to determine whether to grant preclusive effect to the Japanese
23 judgments.

24 ***3. Elements of issue preclusion***

25 Under federal law, the following elements must be satisfied to give a prior
26 judgment preclusive effect:

27 (1) the issue at stake must be identical to the one alleged in the
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1 prior litigation; (2) the issue must have been actually litigated
2 [by the party against whom preclusion is asserted] in the prior
3 litigation; and (3) the determination of the issue in the prior
4 litigation must have been a critical and necessary part of the
judgment in the earlier action.

5 *Town of North Bonneville v. Callaway*, 10 F.3d 1505, 1508 (9th Cir. 1993) (*citing*
6 *Clark v. Bear Stearns & Co.*, 966 F.2d 1318, 1320 (9th Cir. 1992)). It is undisputed
7 that the parties litigated in Japan the issue presented here—the interpretation of the
8 1976 Document—twice in the Tokyo District Court, that the Japanese courts
9 interpreted UMC’s rights under the 1976 Document, and that the interpretation was
10 necessary to the judgments issued.⁴ (SUF 9-15.) The Intellectual Property High
11 Court and the Supreme Court of Japan affirmed the second judgment from the Tokyo
12 District Court. (SUF 16, 21.) The Court thus finds the issue preclusion elements are
13 met here.

14 UMC advances one last argument against applying issue preclusion, asserting
15 “[b]ecause the Japanese courts have not ruled on the scope of UMC’s rights under
16 U.S. law, there is no issue preclusion as to the scope of UMC’s rights on its copyright
17 claim.” (*Id.* at 14.) Both parties recognize the distinction between the issues of
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19 ⁴ UMC argues that the issues in this case were not previously litigated, because the
20 Japanese courts did not consider UMC’s rights under U.S. copyright law, such that
21 there can be “no issue preclusion as to the scope of UMC’s rights on its copyright
22 claim.” (Opp’n at 10, 14.) But this argument confuses the issue. The Japanese courts
23 need not have ruled on UMC’s rights under U.S. law for the judgments to be afforded
24 preclusive effect. It is undisputed the Japanese courts interpreted the terms of the
25 1976 Document. In doing so, they determined the rights transferred in the license
26 agreement. This is a matter of copyright ownership, and those judgments may be
27 afforded preclusive effect as to that issue. Whether TPC violated those rights under
28 U.S. copyright law is a distinct issue, as discussed below, and one that is resolved by
using the Japanese judgments’ determination of the rights transferred. *See Creazioni*
Artistiche Musicali, S.r.l., v. Carlin America, Inc., 2016 WL 7507757, at *3 (S.D.N.Y.
Dec. 30, 2016).

1 determining copyright ownership, to which Japanese law would apply, and issues of
2 infringement, to which U.S. law would apply. (*Id.* at 15; Reply at 7-8.) Using this
3 distinction, UMC adopts the Japanese courts’ determination that “the 1976 Agreement
4 constitutes an exclusive license, outside of Japan, to the Ultraman works identified
5 therein,” to apply U.S. law to the term “ ‘exclusive license,’ ” arguing it therefore
6 “constitutes a ‘transfer of copyright ownership’ ” under 17 U.S.C. § 101. (*Id.* at 15.)
7 According to UMC, then, and applying the meaning of U.S. law to the terminology
8 used by the Japanese courts, the 1976 Document transferred *all* of the copyright
9 rights, including the right to create derivative Ultraman works. (*Id.*)

10 This argument is easily dismissed. “A transfer of copyright ownership’ is an
11 assignment, mortgage, exclusive license, or any other conveyance, alienation, or
12 hypothecation of a copyright or of any of the exclusive rights comprised in a
13 copyright, whether or not it is limited in time or place of effect.” 17 U.S.C. § 101.
14 The Copyright Act provides that “*any* of the exclusive rights comprised in a copyright,
15 including any subdivision of any of the rights specified by section 106, may be
16 transferred as provided by clause (1) and *owned separately*.” 17 U.S.C. § 201(d)(2)
17 (emphasis added). Thus, under U.S. law, the term “exclusive license” does not
18 necessarily indicate a transfer of copyright ownership in whole, and that term in and
19 of itself cannot be used to expand UMC’s rights to include those that were not initially
20 transferred.

21 The Court thus grants issue preclusive effect to the Japanese judgments
22 interpreting the 1976 Document, and adopting those rulings, the Court finds the 1976
23 Document did not transfer the rights in derivative works or adaptations of the original
24 Ultraman works. Accordingly, the Court **GRANTS** TPC’s motion for summary
25 judgment on this issue.

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1 iii. Interpreting the Contract under Japanese Law

2 In matters of contract interpretation, “[s]ummary judgment is appropriate when
3 the contract terms are clear and unambiguous, even if the parties disagree as to their
4 meaning. Interpretation of a contract is a matter of law, including whether the
5 contract is ambiguous.” *United States v. King Features Entm’t, Inc.*, 843 F.2d 394,
6 398 (9th Cir. 1988) (citations omitted).

7 TPC argues that if the Court denies comity and issue preclusion on the
8 interpretation of the 1976 Document, “summary judgment on that issue would still be
9 warranted based on the plain language of the document and Japanese law.” (Mot. at
10 16.) This Court agrees, finding the contract interpretation analysis reaches the same
11 outcome as the issue preclusion analysis: UMC’s rights under the 1976 Document do
12 not include the rights in future or derivative works. (SUF 10, 12.)

13 1. *Japanese law governs*

14 Both TPC and UMC agree Japanese law applies to the interpretation of the
15 1976 Document. (Mot. at 17; Opp’n at 13 n.17; Dkt. No. 138, Declaration of Daniel
16 C. Posner (“Posner Decl.”) ¶ 17, Ex. T (“Ejiri Tr.”) at 37:5-13, 141:10-17.)
17 “Determination of a foreign country’s law is an issue of law.” *Itar-Tass Russian News*
18 *Agency v. Russian Kurier, Inc.*, 153 F.3d 82, 92 (2d Cir. 1998). “In determining
19 foreign law, the court may consider any relevant material or source, including
20 testimony, whether or not submitted by a party or admissible under the Federal Rules
21 of Evidence.” Fed. R. Civ. P. 44.1. District courts have an “obligation to adequately
22 ascertain relevant foreign law, even if the parties’ submissions are lacking,” and need
23 not take judicial notice of foreign law or “provide formal notice of its intention to
24 engage in its own research.” *De Fontbrune v. Wofsy*, 838 F.3d 992, 997 (9th Cir.
25 2016). The rule “thus unshackles courts and litigants from the evidentiary and
26 procedural requirements that apply to factual determinations.” *Id.* In undertaking this
27 task, the Court has consulted the Copyright Act of Japan, the judgments issued by
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1 Japanese courts involving the 1976 Document, and the testimony of the parties' expert
2 witnesses in its broad discretion under the Federal Rules.⁵

3 *2. Applying Japanese law*

4 The Copyright Act of Japan protects a broader spectrum of rights than those in
5 the U.S. Copyright Act. These include rights in reproduction, performance, broadcast,
6 recitation, exhibition, distribution and public showing (for cinematic works), and
7 rental and translation rights. Mark S. Lee, *Japan's Approach to Copyright Protection*
8 *for Computer Software*, 16 Loy. L.A. Int'l & Comp. L.J. 675, 680 (1994) (citing
9 Copyright Act, Law No. 48 of 1970, arts. 21-27,
10 <http://www.cric.or.jp/english/clj/cl2.html> (Japan) ("Copyright Act of Japan"); 17
11 U.S.C. § 106). Like U.S. copyright law, Japanese law also recognizes the original
12 author's exclusive right to create derivative works. *Id.* (citing Copyright Act of Japan
13 art. 28 ("In the exploitation of a derivative work, the author of the pre-existing work
14 shall have the same rights as those of the author of the derivative work has under the
15 provisions of this Subsection.")). To transfer the exclusive right to create derivative
16 works, a contract must specifically state the transfer: "Where a contract for the
17 transfer of copyright makes no particular reference to the rights mentioned in Articles
18 27 and 28, these rights shall be presumed to be reserved to the transferor." Copyright
19 Act of Japan art. 61(2); *accord* Lee, 16 Loy. L.A. Int'l & Comp. L.J. at 686.
20 Copyright ownership and these related rights "belong exclusively to the work's
21 author," and this "ownership interest in a copyright is assignable in whole or in part."
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23 ⁵ To the extent the Court relied on Mr. Ejiri's declaration, the objections thereto are
24 overruled. The objections to paragraphs 20-24 of Mr. Yoshimasa Furuta's declaration
25 (Dkt. No. 166) are sustained. The Court considered but did not rely on the remaining
26 evidence submitted, including the declaration of Mr. Toshiaki Imura (Dkt. No. 139),
27 which the Court found provided no substantive opinion beyond restating the decisions
28 of the Japanese judgments. Accordingly, the objections to this evidence are overruled
as moot, since the Court would reach the same outcome even if all the objections were
sustained.

1 Copyright Act of Japan arts. 1, 14-16, 61(1); *accord* Ejiri Tr. 50:11-24. Courts
2 interpreting contracts under Japanese law look first to the plain language of the
3 document to determine its meaning. If the terms of the contract are unambiguous,
4 there is no need to look inquire into the parties' intent. (*See* Ejiri Tr. 63:1-17.)

5 Considering the plain language of the 1976 Document in light of the Copyright
6 Act provisions, the Court finds the agreement did not transfer the rights in derivative
7 works. The Document does not "make particular reference to" derivative works, and
8 arguably the only other transferred right that could possibly be read to mean the same
9 is the reproduction right, which the Copyright Act defines independently as "the
10 reproduction in a tangible form by means of printing, photography, reprography,
11 sound or visual recording or otherwise." Copyright Act of Japan art. 2.15.
12 "Derivative work," by contrast, is defined as "a work created by translating, arranging
13 musically, transforming, or dramatizing, cinematizing or otherwise adapting a pre-
14 existing work." Japanese Copyright Act art. 2.11. Considering the Act's express
15 directive that a transfer of the rights in derivative works can only be made by
16 "particular reference" to those rights, reading the reproduction right to include
17 derivative rights would contravene the Copyright Act.

18 Courts in Japan interpreting the 1976 Document have reached the same
19 conclusion. In a 2003 decision interpreting the terms of the 1976 Document, the
20 Tokyo District Court did not read the term "reproduction" to include future or
21 derivative works:

22 Defendant [Sompote] alleges that, when the Contract Document was
23 executed, Plaintiff [TPC] granted Defendant not only the copyright to
24 the Copyrighted Works, but also the copyright and exclusive
25 exploitation rights as to future Copyrighted Works in the Ultraman
26 series. In Defendant's affidavit (D#10) there is a statement that the
27 meaning of Article 3.3 included production rights for new Ultraman
28 Copyrighted Works, and Defendant testified as such before this Court.
However, these written and oral statements cannot be believed
because they contradict the fact that the Contract Document identified

1 the movies in Article 1 and provided for the ‘Reproduction right’ in
2 Article 3.3. Since there is no other sufficient evidence to support
3 Defendant’s allegations on this point, Defendant’s allegations are not
4 accepted.

5 (See Dkt. No. 141, Request for Judicial Notice (“RJN”) ¶ 1, Ex. B at 32-33.) In the
6 2010 decision, the Tokyo District Court again reached the same conclusion:

7 Article 3-3.7 of the Contract Document regarding the use of Ultraman
8 characters specifies the characters subject to the license as “all models
9 and characters used in the production of the film works mentioned in
10 article 1,” suggesting that Ultraman characters that appear in
11 derivative works of the Copyrights Works are not subject to the
12 license. Furthermore, as adaptation rights for the Copyright Works
13 were not included in the Exclusive Exploitation Rights, it goes
14 without saying that the withdrawal plaintiff [Sompote] having the
15 Exclusive Exploitation Right for the Copyrighted Works does not
16 prevent the defendant [TPC] from creating derivative works of the
17 Copyrighted Works or exploiting derivative works it creates.
18 Therefore, the Intervenor’s [UMC] claim is without grounds.

19 (RJN ¶ 2, Ex. D at 45.) And affirming the Tokyo District Court’s decision on appeal,
20 the Intellectual Property High Court also refused to read in rights in derivative works
21 to the terms “production right” or “copyright” in sections 3.2 and 3.4, such that “it
22 cannot be said that the Defendant [TPC] has an obligation not to license the
23 exploitation of the New Ultraman Characters to a third party based on the Contract.”
24 (RJN ¶ 3, Ex. 5 at TP00050119.) The Japan Supreme Court affirmed the Intellectual
25 Property High Court’s judgment in full. (SUF 21.)

26 Having considered the language of the 1976 Document, the Court finds the
27 contract does not contain the particular reference to the transfer of rights in derivative
28 works required under the Copyright Act of Japan. The Court does not find the
language is ambiguous, nor does it find UMC’s expert opinion to be persuasive or
effective in creating some ambiguity.

\\

3. UMC's Expert Opinion

UMC's expert, Mr. Ejiri, offers two theories of interpretation relevant to this issue, both of which would support interpreting the 1976 Document in a way that transfers the rights in derivative works. First, Mr. Ejiri opines some of the document's terms should be read broadly to reflect that the agreement was drafted by laypeople and that the terms should not be read in a way that makes them superfluous. According to Mr. Ejiri, the document was "drafted and prepared without the involvement of professional lawyers," and therefore,

the interpretation of the language must be conducted by seeking the meanings not only from the perspective of someone who is a professional lawyer with expertise in intellectual property (which will be likely to lead to a narrow interpretation), but also considering the dictionary definitions (which may lead to a different, and broader, interpretation). Thus it is necessary to seek the real intention of the non-professionals as ordinary people or laypersons in using the terms in the 1976 Agreement.

(Dkt. No. 152, Declaration of Takashi Ejiri (“Ejiri Decl.”) ¶ 11.) He proceeds to define the various rights listed in the document, apparently considering the layperson’s view, yet without providing support from legal authority. Mr. Ejiri concludes without explanation that the distribution, copyright, trademark, and broadcasting rights, “do not need any complicated interpretation, since non-lawyers use those words in the same manner as lawyers.” (*Id.* at ¶ 12.) Mr. Ejiri provides no legal basis for this opinion, nor does he give a reason why these definitions would be different from those in Article 2 of the Copyright Act of Japan. *See, e.g.*, Copyright Act of Japan, arts. 2.8, 2.15, 2.19 (defining the terms “broadcasting,” “reproduction,” and “distribution”).

When it comes to the reproduction right, however, Mr. Ejiri diverges from this approach and does adopt the Copyright Act definition, at least with respect to Section 3.3. He reasons Section 3.3 “has no words in addition to ‘Reproduction,’ and

1 therefore it may be appropriate to place a narrow interpretation, as the same meaning
2 of the Copyright Act in Japan.” (*Id.* at ¶ 15 (citing Japanese Copyright Act, art.
3 2.15).) Mr. Ejiri provides no basis for the distinction between these terms under
4 Japanese law, or why one should be interpreted by the terms of the Copyright Act and
5 the others according to their everyday meaning. At the same time, however, Mr. Ejiri
6 recognizes the Japanese courts applied this definition to both Sections 3.3 and 3.7,
7 which he concludes “led to the incorrect interpretation that Section 3.3 and 3.7 . . .
8 [do] not include rights for alteration or adoption to create derivative works or new
9 movies using the models and characters in the Licensed Pictures and Films.” (*Id.* at ¶
10 17.). Mr. Ejiri does not explain why this interpretation was incorrect under Japanese
11 law.

12 Mr. Ejiri proceeds to explain the second reproduction right, listed in Section
13 3.7, obviously “means something different than the usage of the language of the
14 Copyright Act” and must be interpreted more broadly than Section 3.3 or “there would
15 be no rational reason to identify the licensed rights in duplicate instances, and this
16 would make the addition of ‘models and characters’ in Section 3.7 meaningless.” (*Id.*
17 at ¶ 17.) According to Mr. Ejiri, then, the second “reproduction” right must refer to
18 the “practice of the Japanese film industry of creating new works by ‘remake’;
19 sometimes by using the same characters but with different stories or sometimes by
20 using the same story with different characters.” (*Id.*) In other words, Mr. Ejiri
21 contends the second reproduction right must grant the right to create derivative works.
22 (*See id.* at ¶ 27.) Yet at no point does he square this conclusion with Article 61(2),
23 which requires “particular reference to the rights” in derivative works to overcome the
24 presumption that they are reserved to the transferor, nor does Mr. Ejiri testify that
25 transferring the right of “reproduction” is legally considered to be a sufficient
26 reference to the rights in derivative works such that it would satisfy the requirements
27 of the Act.
28

1 The Court is not persuaded by this theory. Mr. Ejiri provides no basis for his
2 opinion in Japanese law,⁶ and mere disagreement with the Japanese courts’
3 interpretation, absent some other authority, does not render the agreement ambiguous.
4 Further, Mr. Ejiri explained in his deposition testimony that Sections 3.3 and 3.7, by
5 their plain terms, were not duplicative because the reproduction right in Section 3.7
6 referred to merchandise, where Section 3.3 referred to the reproduction right in the
7 films themselves: “When you look at 3.3 . . . this is the reproduction right of films.
8 And when you look at 3.7, it’s reproduction rights of models and characters, and
9 essentially I think this is what you mean. This refers to the creation of things like toys
10 in the broad coverage. So I think this sub-provision is meaningless in the context of
11 film licensing.” (Ejiri Tr. At 67:17-24.) It is *this* interpretation that is consistent with
12 that of the Japanese courts:

13 The Contract Document grants a license to the withdrawal plaintiff
14 [Sompote] for the exclusive exploitation of the movie film works
15 specified in Article I and includes the rights for reproducing and
16 *marketing character merchandise* based on the Original Ultraman
17 Characters and also prohibits the defendant [TPC] from granting
18 licenses for exploitation of the Original Ultraman Characters and the
Copyrighted Works to third parties in countries outside of Japan.

19 (RJN ¶ 2, Ex. D at 44 (emphasis added).) Without legal support for Mr. Ejiri’s
20 opinion that Section 3.7 transferred the rights in derivative works, the Court need not,
21 and does not, find the plain language of the Document supports this interpretation.

22 Second, Mr. Ejiri opines the 1976 Document is an assignment agreement, not a
23 transfer agreement, that conveys the entire universe of copyright rights to UMC,
24 including the rights in derivative works. According to Mr. Ejiri, “[b]ecause the list of
25 rights includes ‘Copyright’ [Section 3.4], that list includes ‘the full range of the rights
26

27 ⁶ In fact, when asked if he was aware of authority under Japanese law to support his
28 opinion that it’s reasonable to interpret the same word different ways within the same
contract, Mr. Ejiri responded, “I don’t know.” (Ejiri Tr. at 67:25-68:4.)

1 that a copyright owner would be entitled to under Japanese Law,’ including the ‘right
2 to create derivative works or adaptations based on the specified works or the
3 characters in them,’ which is sufficiently covered without any need to list those rights
4 separately.” (*Id.* at ¶ 26.) The obvious flaw in this argument is that the 1976
5 Document *did* separately list rights transferred under the agreement in Sections 3.1-
6 3.8. And under the Copyright Act, as Mr. Ejiri concedes (Ejiri Tr. 49:1-50:15), a
7 copyright may be transferred in whole or in part. See Japanese Copyright Act art.
8 61(1). The enumeration of some, but not all, rights under copyright law in the 1976
9 Document thus suggests the drafters did not transfer the copyright in whole. What is
10 more, adopting Mr. Ejiri’s argument in this context (that the articulation of one right
11 could encompass others explicitly enumerated) would directly undermine his
12 argument with respect to the reproduction rights (discussed above, that listing the
13 same right twice must indicate two different meanings to avoid redundant or
14 superfluous terms).

15 Considering these opinions are inconsistent and untethered to legal authority,
16 the Court does not find that Mr. Ejiri’s testimony creates a genuine issue of fact as to
17 the interpretation of the 1976 Document. The Court finds the 1976 Document is
18 unambiguous, that it did not transfer the rights in derivative works, and that it is not
19 reasonably susceptible to Mr. Ejiri’s interpretation. Accordingly, the Court **GRANTS**
20 TPC’s motion for summary judgment as to the interpretation of the 1976 Document.

21 **b. Copyright Infringement**

22 TPC next moves for summary judgment on UMC’s claim for copyright
23 infringement, arguing UMC has no evidence to demonstrate TPC has violated UMC’s
24 exclusive rights in the original Ultraman works in the United States since May 19,
25 2012.⁷ (Mot. at 19.) TPC argues it is undisputed that TPC has not distributed or
26

27 ⁷ The U.S. Copyright Act provides a three-year statute of limitations. 17 U.S.C. §
28 507(b).

1 displayed or earned revenue outside of Japan from the original Ultraman works listed
2 in the 1976 Document such that it could not have infringed on UMC's rights in those
3 works. (*Id.* at 20.)

4 UMC argues that, as the exclusive licensee in the United States of the
5 copyrights in the original Ultraman works, "UMC holds the rights conveyed under
6 Section 106, including the right to sue for infringement of the original works," and
7 that therefore it may prove its infringement claim "by showing that the allegedly
8 infringing work is substantially similar to the copyrighted work."⁸ (Opp'n at 18.)
9 According to UMC, "TPC has not introduced evidence to satisfy its initial burden of
10 showing the absence of a genuine issue of material fact as to whether Ultraman works
11 that it has distributed in the United States since May 19, 2012 are substantially similar
12 to the Ultraman works." (*Id.* at 18-19.)

13 This argument apparently rests in part on UMC's adoption of the premise that it
14 is "the 1976 Agreement constitutes an exclusive license, outside of Japan, to the
15 Ultraman works identified therein." (Opp'n at 15.) UMC applies the definition under
16 U.S. copyright law to the language used by the Japanese courts, arguing the "exclusive
17 license" "constitutes a 'transfer of copyright ownership'" under 17 U.S.C. § 201(d)(2).
18 (*Id.*) According to UMC, then, it "holds the rights conveyed under Section 106,
19 including the right to sue for infringement of the original works." (*Id.* at 18.)

20 The Court has already rejected a version of this argument. The U.S. Copyright
21 Act limits owners "of any particular exclusive right . . . *to the extent of that right*, to
22 all of the protection and remedies accorded to the copyright owner by this title." 17
23 U.S.C. § 202(d)(2). As this Court has found, TPC did not transfer the rights in
24 derivative works or adaptations of the original Ultraman works in the 1976 Document.

25
26 ⁸ In the Ninth Circuit, infringement may be proven by showing a defendant had access
27 to the copyrighted works and there is "substantial similarity of ideas and expression"
28 between the works. *Benay v. Warner Bros. Entm't, Inc.*, 607 F.3d 620, 624 (9th Cir. 2010).

1 A work is derivative “if it is substantially derived from an underlying work, and
2 would otherwise constitute an infringement of the copyright in the underlying work
3 but for the permission granted by the copyright proprietor thereof for its use.” *Harry*
4 *Fox Agency, Inc. v. Mills Music, Inc.*, 543 F. Supp. 844, 849 (S.D.N.Y. 1982), *rev’d*
5 *on other grounds*, 720 F.2d 733 (2d Cir.1983), *cert. granted sub nom. Mills Music,*
6 *Inc. v. Snyder*, 466 U.S. 903, 104 S. Ct. 1676 (1984); *see also* 17 U.S.C. § 101. “To
7 constitute a derivative work, the infringing work must incorporate in some form a
8 portion of the copyrighted work. In addition, the infringing work must be
9 substantially similar to the copyrighted work.” (*Vault Corp. v. Quaid Software Ltd.*,
10 847 F.2d 255, 267 (5th Cir. 1988). By definition then, a derivative work will be
11 substantially similar to the copyrighted work. Here, the copyrighted works are the
12 original Ultraman works, in which UMC holds limited rights, not including the rights
13 in derivative works. Thus, UMC’s circular argument once again disjointedly applies
14 the technical terminology under U.S. copyright law to the language used in the
15 Japanese judgments in an attempt to broaden the scope of its rights: According to
16 UMC, though it holds no rights in derivative works, it can sue for infringement for
17 works that are substantially similar to the original works, which by definition are
18 derivative. (See Opp’n at 18-19.) But the terms of the 1976 Document do not support
19 this reading, as several Japanese courts and this Court have held.⁹ Instead, by not
20 transferring the rights in derivative works, TPC reserved to itself the rights to create
21 new Ultraman works and thereby limited UMC’s rights to sue for the actual

22
23 ⁹ And, despite the language used by the Japanese courts, they clearly treated the
24 agreement as a license that did not transfer the copyright itself, or all transferable
25 copyright rights. (See, e.g., RJN ¶ 2, Ex. D at 5 (“On February 28, 2003, the Tokyo
26 District Court delivered a ruling that the Contract Document was genuine, however
27 the content of the Contract was interpreted as giving a license to exclusively exploit
28 the Copyrighted Works and did not transfer the copyright itself.”) UMC has presented
no evidence that creates a genuine issue as to the scope of the transfer of these rights,
so this Court treats the transfer as one for a license limited the particular rights
enumerated in the 1976 Document, too.

1 infringement of the original Ultraman works, and not those that are substantially
2 similar.

3 The only works, then, TPC could infringe are those in the 1976 Document. But
4 it is undisputed that TPC has not distributed, displayed, or earned revenue outside of
5 Japan from the original Ultraman works since May 19, 2010. (SUF 25, 26.)¹⁰ In
6 response, UMC has not “designate[d] specific facts demonstrating the existence of
7 genuine issues of fact for trial,” which is required of the non-moving party once the
8 “moving party . . . prove[s] that there is an absence of evidence to support the non-
9 moving party’s case.” *In re Oracle Corp. Securities Litig.*, 627 F.3d 376, 387 (9th
10 Cir. 2010). Accordingly, the Court **GRANTS** TPC’s motion for summary judgment
11 as to UMC’s copyright infringement claim.

12 **c. Breach of Contract**

13 TPC moves for summary judgment on UMC’s breach of contract claim, arguing
14 it is barred by *res judicata*, it fails on its merits, and it is preempted by the Copyright
15 Act. (Mot. at 20-23.)

16 The parties appear to agree that UMC’s breach of contract claim is governed by
17 Japanese law and is subject to a five-year statute of limitations, covering conduct
18 dating back to May 19, 2010. (Mot. at 21.) Once again, TPC argues there is no
19 genuine issue of material fact that it did not distribute, display, or earn revenue from
20 any of the original Ultraman works outside of Japan since May 19, 2010. (SUF 25,
21 26.) UMC argues the 1976 Document gives it exclusive exploitation rights that

22
23 ¹⁰ To the extent UMC opposes summary judgment on the ground that TPC failed to
24 offer evidence that it did not infringe on “Giant vs. Jambo ‘A’,” “Haruman and the
25 Seven Ultraman,” and “Jamborg Ace,” because Kei Minamitani did not attest to these
26 works in his declaration (*see* Dkt. No. 140, Declaration of Kei Minamitani
27 (“Minamitani Decl.”) ¶ 3. *See also* Opp’n at 20 n.24; Reply at 18 n.10), the Court
28 notes UMC alleges it has applied for registration for only “Ultra Q,” “Ultraman,”
“Ultra Seven,” and “Ultraman Taro.” (Compl. ¶ 34.) The Court therefore finds the
three omitted works (if, indeed, they were omitted)—“Giant v. Jambo ‘A’,” “Haruman
and the Seven Ultraman,” and “Jamborg Ace”—are beyond the scope of UMC’s
copyright infringement claim and therefore do not create a triable issue of fact.

1 extend to works not identified in the 1976 Document, and TPC has not introduced any
2 evidence to show that it has not distributed or displayed any of *these* works. (Opp’n at
3 20.) But as explained above, UMC’s rights are limited to those works listed in the
4 1976 Document. As to those works, UMC has not offered any evidence that would
5 create a triable issue of fact for trial. Accordingly, the Court **GRANTS** TPC’s motion
6 for summary judgment on this claim.¹¹

7 **d. Intentional Interference**

8 To prove intentional interference with contractual relations, a plaintiff must
9 show: “(1) the existence of a valid contract between the plaintiff and a third party; (2)
10 defendant's knowledge of this contract; (3) defendant's intentional acts designed to
11 induce a breach or disruption of the contractual relationship; (4) actual breach or
12 disruption of the contractual relationship; and (5) resulting damage.” *Pac. Gas &*
13 *Elec. Co. v. Bear Stearns & Co.*, 50 Cal. 3d 1118, 1126 (1990). UMC claims “TPC
14 committed interference by falsely claiming that UMC did not have rights to license
15 Ultraman works.” (Opp’n at 24.) TPC argues there is no evidence TPC intentionally
16 interfered with any contract, and that there is no evidence UMC was a party to the
17 contracts between GMG and Veranda. (Mot. at 24.) TPC also argues this claim is
18

19 ¹¹ Even if there was evidence that created a triable issue as to his claim, it would be
20 preempted by the Copyright Act. Neither party has submitted, or at least cited to,
21 evidence of Japanese law as to the breach of contract claim. As UMC points out, “If
22 the parties have failed to prove Japanese law on this point, the court ‘may say that the
23 parties have acquiesced in the application of the local law of the forum.’” (Opp’n at
24 17 n.21 (citing *Mineba Co., Ltd. v. Papst*, 444 F. Supp. 2d 68, 185 (D.D.C. 2006).) In
25 such a case, California law would govern the claim. To avoid preemption, then, the
26 claim must not “come within the subject matter of copyright” and “[t]he state claim
27 must have an ‘extra element’ which changes the nature of the action.” *Jacobsen v.*
28 *Katzer*, 609 F. Supp. 2d 925, 933 (N.D. Cal. 2009). UMC has not identified any
“extra element” here, nor has it shown that the rights it seeks to protect “are
qualitatively different from the copyright rights.” *Id.* And though UMC argues its
breach of contract claim would not be preempted to the extent it is premised on
extraterritorial infringement, there is no evidence of extraterritorial infringement:
UMC does not dispute that TPC has not displayed, distributed, or earned revenue from
the original Ultraman works outside of Japan since May 19, 2010. (SUF 25-26.)

1 preempted by the Copyright Act. (*Id.* at 25.)

2 First, as to TPC's preemption argument, the Copyright Act does not preempt
3 claims relating to "activities violating legal or equitable rights that are not equivalent
4 to any of the exclusive rights within the general scope of copyright as specified by
5 section 106." 17 U.S.C. § 301(b)(3). Here, TPC's position in its 2014 e-mail
6 communications with Veranda was that the 1976 Document was invalid, and that
7 accordingly, Veranda had "no legal authority to claim the rights for the Ultraman
8 Series." (Posner Decl. ¶ 8, Ex. J at TP00044624.) TPC did not assert that Veranda
9 had no rights in *derivative works or adaptations* of the original Ultraman works
10 conveyed, as is the basis of TPC's other arguments in this motion, such that Veranda
11 should remove only those works that fell beyond the scope of those licensed in the
12 1976 Document. Instead, TPC claimed UMC, and by extension its licensees, had no
13 rights in *any* Ultraman works because the entire 1976 Document was forged. (*Id.*) As
14 discussed above, the validity of a contract is not governed by the Copyright Act.
15 Accordingly, the Court finds UMC's intentional interference claim is not preempted.

16 Second, TPC argues there is no evidence of intentional interference because,
17 "[w]hile TIGA is an alleged licensee of UMC, there is no evidence that TPC knew of
18 any alleged contract between them or did anything to intentionally interfere with it, or
19 that any contract between them was actually breached or disrupted as a result of
20 TPC's intentional acts, resulting in damages to UMC." (*Id.* at 24.) UMC responds
21 that a series of e-mails exchanged between Veranda and TPC in 2014 demonstrates
22 TIGA acted as an agent for UMC in licensing the Ultraman works to GMG. (Opp'n at
23 23; SGI 60.) In these emails, Veranda claimed that "Ultraman . . . is licensed by Tiga,
24 Co. Ltd. as agent for UM Corporation exclusively to Golden Media Group, Inc.
25 represented by Veranda Entertainment, LLC." In its response, TPC recognized that
26 both UMC and TIGA relied on the 1976 Document as the basis for their rights to
27 distribute Ultraman works in the United States. (SGI 60; Posner Decl. ¶ 8, Ex. J at
28

1 TP00044624.) TPC then asserted the 1976 Document was forged and that
2 accordingly, Veranda “has no legal authority to claim the rights for the Ultraman
3 Series.” (*Id.*) TPC thus clearly knew of the agreements between TIGA and UMC,
4 and of at least some connection to Veranda. At minimum then, the evidence shows
5 TPC knew of a contractual link between Veranda and UMC and proceeded to insist
6 that Veranda take down the YouTube works at issue. Though this may not
7 conclusively establish the element of intentional interference, it is enough to create a
8 genuine dispute of fact for trial.

9 Third, TPC argues the intentional interference claim fails because there is no
10 evidence UMC was a party to or a beneficiary of the contracts between GMG and
11 Veranda. (Mot. at 24.) “For a third party to qualify as a beneficiary under a contract,
12 the contracting parties must have intended to benefit that third party, and their intent
13 must appear from the terms of the contract.” *Ascherman v. Gen. Reinsurance Corp.*,
14 183 Cal. App. 3d 307, 311 (1986). “[I]t is not enough that the third party would
15 incidentally have benefitted from performance.” *Spinks v. Equity Residential*
16 *Briarwood Apartments*, 171 Cal. App. 4th 1004, 1022 (2009). “On the other hand, the
17 third person need not be named or identified individually to be an express beneficiary.
18 A third party may enforce a contract where he shows that he is a member of a class of
19 persons for whose benefit it was made.” *Id.* at 1023 (citations omitted). “Ultimately,
20 the determination turns on the manifestation of intent to confer a benefit on a third
21 party. Ascertaining this intent is a question of ordinary contract interpretation.” *Id.*
22 (citation omitted).

23 UMC argues the August 2014 agreement between TIGA and GMG evidenced
24 such an intent. (Opp’n at 24.) Specifically, UMC relies on a term that obliged TIGA
25 to pay third parties for the rights TIGA transfers to GMG:

26 [ITGA] paid or will pay . . . remuneration for . . . copyright royalties,
27 and any and all other similar payments which must be made in
28 connection with the Programs or other Materials to any third parties

1 including musicians, directors, writers, producers, announcers,
2 publishers, composers, actors, performers and any other persons who
3 participated in the production of the Programs or other Materials, and
4 to any performing rights societies, collection societies, unions, guilds,
or other labor organizations.

5 (SGI 58.) But this provision falls under section 7, titled "Third Party Obligations,"
6 which designates that TIGA would be the party responsible for satisfying any
7 outstanding obligations to non-parties. The plain language does not purport to grant
8 UMC a benefit, even incidentally. The Court therefore finds that UMC is not a third-
9 party beneficiary to the contract at issue and has failed to create a triable issue of fact
10 as to the first element of the intentional interference tort. Accordingly, the Court
11 **GRANTS** TPC's motion for summary judgment on this claim.

12 **IV. CONCLUSION**

13 For the foregoing reasons, the Court **GRANTS** TPC's motion for summary
14 judgment.

15 **IT IS SO ORDERED.**

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17
18 Dated: September 8, 2017



19 _____
20 HONORABLE ANDRÉ BIROTTE JR.
21 UNITED STATES DISTRICT COURT JUDGE
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